



REMARKS

Interview summary

Undersigned counsel for Applicants sincerely thanks Examiner Davis for extending the courtesy of a personal interview held on October 19, 2006 at the USPTO. As noted in the Interview Summary of same date, arguments were presented to overcome the 35 U.S.C. § 103 rejections. In particular, the compositions presented in the Declaration dated February 21, 2006 and their unexpected effects were discussed.

During the course of the interview, the Examiner expressed concern that some ingredients included in the inventive composition ("Diet C") were not necessarily required of the claimed composition. Apparently, the Examiner was of the opinion that some of those ingredients could, absent evidence to the contrary, have contributed to the observed "unexpected" results and, if so, those ingredients should also be necessary limitations of the claimed invention.

Counsel for Applicants respectfully noted, however, certain ingredients (e.g., vitamin B12, zinc, citrate) were present in the exact same, or nearly exact (i.e., "control") amounts as in the comparative Diets A and/or B. Simply put, those minerals and vitamins could not have accounted for the unexpected results. The Examiner appeared to agree.

With respect to folic acid and vitamin B6, which were present in amounts greater than 2x of either control diet, Applicants have elected to amend the composition claims to include same vitamins. Applicants respectfully note that the amendment was entered solely in the interest of speeding prosecution and should not be construed as an acquiescence to the Examiner's position on the matter. In fact, Applicants explicitly retain the right to file one or more continuation applications to the canceled subject matter.

In sum, Applicants believe that the present application is now in condition for allowance. As discussed, the Examiner is kindly asked to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Status of the claims

Claims 56-63, 65-73, 76, 77, 80 and 81 were pending in the instant application. Claims 56 and 73 have been amended with this submission, yet no claims have been added or canceled. Upon entry of this paper, therefore, claims 56-63, 65-73, 76, 77, 80 and 81 will remain pending and under active consideration. Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claim rejections under 35 U.S.C. § 112

Applicants kindly thank the Examiner for indicating the rejections under both the first and second paragraphs of the subject statute have been withdrawn.

Claim rejections under 35 U.S.C. § 103

All of the claims stand rejected for want of obviousness over combinations of Horrobin, Della Valle, Fugh-Berman, Taiyo Fishery Co., Yu, Smith, Hutterer and/or Glick for the reasons stated in paragraphs 5-9 of the outstanding Office Action. Applicants respectfully traverse this rejection.

Traversal is based on the grounds that Applicants have sufficiently demonstrated that the claimed combination of ingredients provides results that one of ordinary skill in the art would have found "unexpected." Hence, even if the Examiner were to properly establish a prima facie case for obviousness, Applicants have provided substantial, objective evidence of "unexpected results" sufficient to overcome any such allegation. As well, for reasons expounded above in the Interview summary, Applicants have amended the claims to address some remaining concerns of the Examiner. Taken together, Applicants respectfully submit that the rejection under Section 103 has been overcome and hereby solicit its withdrawal.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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By 

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